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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,768	10/31/2001	Edward F. Miller	EVLDP001	3198
22434	7590	05/13/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			HUYNH, BA	
		ART UNIT		PAPER NUMBER
				2179

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/041,768	MILLER ET AL.	

  

<b>Examiner</b>	<b>Art Unit</b>	
Ba Huynh	2179	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### **Status**

1) Responsive to communication(s) filed on 18 March 2005.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

4) Claim(s) 1-7,10 and 13-21 is/are pending in the application.

4a) Of the above claim(s) 6,7,10 and 13-21 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### **Attachment(s)**

<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>	<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>
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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of claims 1-5 in the reply filed on 3/18/05 is acknowledged. The traversal is on the ground(s) that the different groups of inventions as presented do not provide burden on the examiner. This is not found persuasive because different search and evaluation for each of the different groups put a burden on the examiner. See 37 CFR 1.141.

The requirement is still deemed proper and is therefore made FINAL. Claims 6, 7, 10, 13-21 withdrawn from further examination as being non-elected inventions.

### ***Claim Rejections - 35 USC § 102***

Claims 1 is rejected under 35 U.S.C. 102(e) as anticipated by US patent #6,754,701 (Kessner).

- As for claim 1: Kessner teaches an improvement of network browser application, wherein the browser has built-in capabilities to perform analysis and testing of websites residing on the Internet (3:37 – 4:34).

### ***Claim Rejections - 35 USC § 103***

Claims 2-5 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US patent #6,754,701 (Kessner) in view of US patent #6,418,544 (Nesbitt).

- As for claim 2: Kessner teaches a test-enabled web browser, comprising:

standard browsing components (i.e., the browser, 4:22-23);  
a load testing components that operate to test a website server in accordance  
with a load (3:38-43; 4:11-21);  
a graphical user interface to provide user access to the standard browsing  
components and the load testing components (3:62-65; 4:11-21);  
wherein when the load testing component is activated, a number of multiple  
copies of the browser on a single client machine (4:22-34), with each of the  
copies of the browser separately executing a playback script (3:46-65; 7:63-8:15);  
and

wherein the load applied to the website server by the number of multiple  
copies of the test-enabled browser is dependent on the number (1:41-55). It is  
inherently included in Kessner that the cache is turned off since Kessner is silent  
regarding the using of stored documents in the cache. Even if it is not,  
implementation of load testing with cache turn off is well known in the art as  
disclosed by Nesbitt et al (2:7-3:43). One of skill in the art would be motivated to  
load testing with cache turn off to achieve realistic result as suggested by Nesbitt.

- As for claim 3: The test-enabled browser comprises at least one of a script  
record component and a script playback component (3:46-65; 7:63-8:15).
- As for claims 4, 5: It is inherently included in Kessner's teaching of WinInet  
that the standard browsing components comprises DLL components pertain to  
WinInet (7:12-20; 9:37). Evidence support for the inherency reasoning can be  
found, at least, in US patent #6,601,020, 27:35-51).

***Response to Arguments***

Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (571) 272-4138. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on (571) 272-4136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ba Huynh  
Primary Examiner  
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5/9/05

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